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SUPREME COURT, U.S.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1965

No. [redacted] 244

BROTHERHOOD OF RAILROAD TRAINMEN, a labor organization, ET AL., *Petitioners,*

v.

JACKSONVILLE TERMINAL COMPANY, a Florida corporation; and HONORABLE ROGER J. WAYBRIGHT, as Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida,

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA FIRST DISTRICT

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v.

JACKSONVILLE TERMINAL COMPANY, a Florida corporation; and HONORABLE ROGER J. WAYBRIGHT, as Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida,

*Respondents.*

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## PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA FIRST DISTRICT

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Petitioners[1] pray that a writ of certiorari issue to

[1] Petitioners, who were petitioners or relators on an original proceeding on Suggestion For Writ of Prohibition in the District Court of Appeal, First District, below, are: Brotherhood of Railroad Trainmen, a labor organization; Order of Railway Conductors and Brakemen, a labor organization; Brotherhood of Locomotive Firemen and Enginemen, a labor organization; Ray Moore, an individual; Lowell Kennedy, an individual; T. C. Boland, an individual; and J. E. Eason, an individual.

review the final judgment of the District Court of Appeal, First District, State of Florida, entered in this cause on June 8, 1966. This case is a companion case to *Atlantic Coast Line Railroad Co., et al.* v. *Brotherhood of Railroad Trainmen, et al.*, No. /, October Term, 1965, wherein this Court on June 6, 1966, granted petitioners' application for reinstatement of a preliminary injunction of the United States District Court for the Middle District of Florida issued May 10, 1966, (which had been reversed and vacated by the United States Court of Appeals for the Fifth Circuit effective May 24, 1966) and shortened the times for filing a petition for a writ of certiorari to the Court of Appeals for the Fifth Circuit and opposition thereto. The conduct which is the subject matter of both the federal suit and this State Court suit (i.e., peaceful, orderly picketing of the premises of the Jacksonville Terminal Company by striking Florida East Coast Railway Company employees) is identical, as is the relief requested by the railroad plaintiffs in each case.

## CITATION TO OPINIONS BEDOW

The District Court of Appeal, First District, State of Florida, did not render an opinion and its final judgment here involved, styled "Order", entered on June 8, 1966, is not yet reported, but will be officially reported at some later time in the Southern Second reports. The said Order of June 8, 1966, is reproduced in Appendix A hereto, and appears at the conclusion of the certified record filed herewith. The Order here involved was entered in an original prohibition proceeding instituted in the Florida District Court of Appeal, First District, at Tallahassee, Florida, on Friday, June 3, 1966, seeking to prohibit the Respondent,

Honorable Roger J. Waybright, as Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, from exercising jurisdiction over the subject matter of a pending labor injunction suit. The proceedings in the Circuit Court for the Fourth Judicial Circuit, in and for Duval County, Florida, have not been reported, either officially or unofficially. Pertinent pleadings and portions therefrom appear in the certified record filed herewith as exhibits to the Suggestion for Writ of Prohibition filed in the Florida District Court of Appeal, First District, below, and are reproduced in Appendix C hereto.

## JURISDICTION

The Order, or final judgment, of the Florida District Court of Appeal, First District, was entered on June 8, 1966, and is printed in Appendix A hereto, *infra*. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

The grounds on which the jurisdiction of this Court is invoked are as follows:

On May 24, 1966, the respondent, Jacksonville Terminal Company, filed suit against petitioners in the Florida Circuit Court for the Fourth Judicial Circuit, in and for Duval County, Florida seeking to enjoin certain peaceful picketing of its premises which it alleged constituted a secondary boycott[2] and which it affirmatively alleged was not subject to the exclusive,

[2] See paragraph 12 of complaint and amended complaint, Exhibits A and C to Suggestion for Writ of Prohibition (in Appendix C hereto).

primary jurisdiction of the National Labor Relations Board for stated legal reasons.[3]

Petitioners promptly answered the complaint asserting that the jurisdiction of the Florida State Courts had been preempted by controlling federal law.[4] Nevertheless, the trial court proceeded to try the case and on May 30, 1966, asserted jurisdiction over the subject matter of the case and entered its Order for Temporary Injunction[5] restraining the picketing involved although expressly finding that no violence or threat of violence was involved in such picketing.

On June 3, 1966, this case was instituted as an original proceeding in the Florida District Court of Appeal, First District, below, by the filing of a Suggestion seeking a writ of prohibition to prevent the respondent, Honorable Roger J. Waybright, as a Judge of the Florida Circuit Court for the Fourth Judicial Circuit, Duval County, Jacksonville, Florida, from exercising jurisdiction over the labor injunction case pending before him which involved only peaceful conduct "arguably" within the exclusive, primary jurisdiction of the National Labor Relations Board and which the State Court, under the doctrine of federal preemption and under controlling federal law, lacked jurisdiction to adjudicate.

A hearing on the Suggestion was immediately scheduled; all parties were notified; and on June 7, 1966,

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[3] See paragraph 11 of complaint and amended complaint, Exhibits A and C to Suggestion for Writ of Prohibition (in Appendix C hereto).

[4] Exhibit B to Suggestion for Writ of Prohibition (in Appendix C hereto).

[5] Exhibit E to Suggestion for Writ of Prohibition (in Appendix C hereto).

the Florida District Court of Appeal, First District, heard argument as to whether the Suggestion for Writ of Prohibition made out a prima facie case for a rule nisi to issue.

On June 8, 1966, the District Court of Appeal, First District, issued its Order here involved holding that the Suggestion failed to make out a prima facie case and denying the Suggestion. Such Order finally disposed of the original prohibition proceedings and therefore constitutes a final judgment in termination of such proceedings.

The Florida District Court of Appeal, First District, is the only court having general appellate jurisdiction over the trial court here involved under Article V, Section 5, Florida Constitution. Under Article V, Section 4, the Florida Supreme Court has no jurisdiction to issue a writ of prohibition to the trial court in this case,[6] and the decision of the District Court of Appeal denying the Suggestion is likewise not reviewable by the Florida Supreme Court under the Florida Constitution since it does not fall within the limited types of decisions of the Florida District Courts of Appeal reviewable by the Supreme Court under Article V, Section 4(2).

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[6] The jurisdiction of the Florida Supreme Court to issue writs of prohibition to trial courts is limited by Article V, Section 4(2), Florida Constitution, to cases where "questions are involved upon which a direct appeal to the Supreme Court is allowed as a matter of right". Direct appeals from Florida trial courts to the Florida Supreme Court are limited under Article V, Section 4(2), to judgments imposing the death penalty, to final judgments or decrees directly passing upon the validity of a state statute or a federal statute or treaty, or construing a controlling provision of the Florida or federal constitution, and to final judgments or decrees for the validation of bonds and certificates of indebtedness.

The decision of the Florida District Court of Appeal, First District, here involved is, therefore, a final decision by the highest court of the State of Florida in which a decision could be had. The decision *denies* the Suggestion[7] and thereby denies petitioners' federal claim that the Florida trial court was proceeding without jurisdiction over the subject matter of the labor injunction case before it in usurpation of the N.L.R.B.'s exclusive, primary jurisdiction.

It is clear under Florida law that prohibition is an appropriate remedy where a trial court is proceeding without jurisdiction over the subject matter of the action in usurpation of jurisdiction belonging to another forum. *Winn-Lovett Tampa* v. *Murphree* (Fla. 1954), 73 So. 2d 287;[8] *State ex rel. Swearingen* v. *Railroad Comrs.* (1920), 79 Fla. 526, 84 So. 444. See cases collected at 25 Fla. Jur., Prohibition, § 18 (Usurpation of Jurisdiction) and § 19 (Want of Jurisdiction).[9]

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[7] Compare *State ex rel. Emanuel* v. *Cooper* (Fla. 1963), 152 So. 2d 471, where the District Court of Appeal had *dismissed* a Suggestion, thereby indicating that the remedy of prohibition was not there appropriate.

[8] The *Winn-Lovett Tampa* v. *Murphree, supra,* case is one where the Florida State Court was proceeding to adjudicate a case within the exclusive, primary jurisdiction of a Florida administrative agency, the Florida Industrial Commission. Prohibition was held to lie and was issued. Clearly the fact that here it is a Federal administrative agency which has exclusive primary juridiction could not be a proper basis for denying similar relief.

[9] While many of these decisions involve writs of prohibition issued by the Florida Supreme Court to Florida trial courts, they were rendered prior to adoption of Article V of the Florida Constitution in 1956 establishing the District Courts of Appeal and limiting the general appellate jurisdiction of the Florida Supreme Court over Florida trial courts.

Prohibition will also lie to prohibit enforcement of an injunction entered in excess of the trial court's jurisdiction. *Tyler* v. *Thomas* (1934), 114 Fla. 368, 153 So. 848; *Joughin* v. *Parks* (1933), 107 Fla. 833, 147 So. 273. As stated in *State ex rel. Anderson* v. *Parks* (1927), 94 Fla. 91, 113 So. 702, 703:

> "In this state, however, the rule is settled that:
>
> " 'Where the want or excess of jurisdiction relates to the subject matter and is apparent upon the face of the proceedings of an inferior court sought to be prohibited, and that court has made some order in the exercise of such unauthorized jurisdiction, prohibition will lie, even though no plea to the jurisdiction has been tendered to and ruled upon by the inferior court.' State v. White, 40 Fla. 297, 24 So. 160"

It is respectfully submitted that this Court has jurisdiction to review the ruling below which constitutes a final decision by the highest state court in which a decision could be had upholding the jurisdiction of the state trial court in this labor injunction case and denying petitioners' federal claim of exclusive, primary jurisdiction in the NLRB under federal law.

Petitioners particularly rely upon the decision of this Court in *Local No. 438* v. *Curry,* 371 U.S. 542, 83 S. Ct. 531, 9 L.Ed. 2d 514 (1963) in support of this Court's jurisdiction in this case. See also, dissenting opinion in *Montgomery B. & C.T.C.* v. *Ledbetter,* 344 U.S. 178, 181-182, 73 S. Ct. 196, 197-198, 97 L.Ed. 204 (1952).

## QUESTIONS PRESENTED

IS THE CONDUCT OF PETITIONERS OVER WHICH THE FLORIDA TRIAL COURT BELOW HAS PROCEEDED TO EXERCISE JURISDICTION, I.E., THE PEACEFUL AND ORDERLY PICKETING OF A RAILROAD ENGAGED IN INTERSTATE COMMERCE BY A LABOR ORGANIZATION THAT REPRESENTS GENERALLY BOTH RAILROAD AND NON-RAILROAD EMPLOYEES BUT WHICH IS REPRESENTING ONLY STRIKING EMPLOYEES OF ANOTHER RAILROAD CARRIER IN REGARD TO THE PICKETING INVOLVED, "ARGUABLY" WITHIN THE EXCLUSIVE AND PRIMARY JURISDICTION OF THE NATIONAL LABOR RELATIONS BOARD UNDER THE NATIONAL LABOR RELATIONS ACT?

DOES A STATE COURT HAVE JURISDICTION UNDER CONTROLLING FEDERAL LAW (INCLUDING THE NORRIS-LAGUARDIA ACT, 29 U.S.C. 101-115, AND THE CLAYTON ACT, 29 U.S.C. 52) TO ENJOIN PEACEFUL AND ORDERLY PICKETING BY A LABOR ORGANIZATION THAT REPRESENTS GENERALLY BOTH RAILROAD AND NON-RAILROAD EMPLOYEES BUT WHICH IS REPRESENTING ONLY STRIKING EMPLOYEES OF ANOTHER RAILROAD CARRIER IN REGARD TO THE PICKETING INVOLVED, WHERE THE CARRIER BEING PICKETED IS ENGAGED IN INTERSTATE COMMERCE AND IS REGULARLY PROVIDING ESSENTIAL LABOR SERVICES TO THE STRUCK CARRIER?

## STATUTES INVOLVED

The following statutes are involved:

1. The *Labor Management Relations Act,* 1947, 29 U.S.C. 141 et seq.

The pertinent provisions of this Act are:

Section 2, Definitions, 29 U.S.C. 152.
Section 7, Rights of Employees, 29 U.S.C. 157.
Section 8(b)(4)(B), Unfair Labor Practices, 29 U.S.C. 158.
Section 8(c), 29 U.S.C. 158.

2. The *Norris-LaGuardia Act,* 29 U.S.C. 101 et seq.

The pertinent provisions of this Act are:

Section 1, 29 U.S.C. 101.
Section 2, 29 U.S.C. 102.
Section 4, 29 U.S.C. 104.
Section 5, 29 U.S.C. 105.
Section 13, 29 U.S.C. 113.

3. The *Clayton Anti-Trust Act,* 38 Stat. 730, 15 U.S.C. 17, 29 U.S.C. 52.

The pertinent provisions of this Act are:

Section 6, 15 U.S.C. 17.
Section 20, 29 U.S.C. 52.

4. The *Railway Labor Act,* 45 U.S.C. 151 et seq.

The pertinent provisions of this Act are:

Section 1, Definitions, 45 U.S.C. 151.
Section 1a, General Purposes, 45 U.S.C. 151a.

The foregoing statutory provisions, being lengthy, are set forth in Appendix B hereto, infra.

## STATEMENT OF THE CASE

The following facts all appear from the face of the pleadings in the courts below or were admitted and found to be the fact by the trial court:

The petitioners are unincorporated labor organizations or members thereof (¶ 2 of complaint and amended complaint, Exhs. A & C to Suggestion, Appendix C hereto). Petitioners are on legal strike against the Florida East Coast Railway Company (¶ 4 of complaint and amended complaint, Exhs. A &

C to Suggestion, Appendix C hereto). The respondent Terminal Company is engaged in the railroad terminal business, and in the course of such business provides services for the struck Florida East Coast Railway Company and for other railroad carriers using its facilities and services (¶ 1 of complaint and amended complaint, Exhs. A & C to Suggestion, Appendix C hereto). On May 4, 1966, the petitioners commenced picketing the premises of respondent Terminal Company (¶ 6 of complaint and amended complaint, Exhs. A & C to Suggestion, Appendix C hereto). This picketing was enjoined several hours later by federal court order in a case which is still pending in the U. S. District Court for the Middle District of Florida[10] (¶ 8 of complaint and amended complaint, Exhs. A & C to Suggestion, Appendix C hereto).

The picketing by petitioners is claimed by respondent Terminal Company to constitute an illegal secondary boycott (¶ 12 of complaint and amended complaint, Exhs. A & C to Suggestion, Appendix C hereto). However, there is no allegation that the picketing involved violence or disorder, and the trial court specifically found that there was no evidence of any violence or threat of violence involved in the picketing (¶ 6 of Order for Temporary Injunction, Exh. E to Suggestion, Appendix C hereto).

Respondent Terminal Company is a railroad common carrier subject to the Interstate Commerce Act,

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[10] This is, of course, the same companion case which is also currently pending in this Court and in which this Court, on June 6, 1966, entered an Order reinstating the U. S. District Court's injunction which had been reversed and vacated by the U. S. Court of Appeals for the Fifth Circuit on May 24, 1966. *Atlantic Coast Line Railroad Company, et al.* v. *Brotherhood of Railroad Trainmen, et al.*, No. ——, October Term, 1965.

as are the Florida East Coast Railway Company and the other railroads served by the Terminal Company (¶ 2 of Terminal Company's sworn complaint in the federal court suit, which was introduced as defendants' Exh. 1 in the state court proceedings, Exh. F to Suggestion, Appendix C hereto). The amount of freight, passengers, mail and express traffic affected by the picketing is "extensive" and involves "service between points in Florida and the rest of the United States and adjacent foreign countries" (¶ 2 of Exh. F to Suggestion, Appendix C hereto). The volume of business of the respondent Terminal Company alone, which is affected, involves over $200,000.00 per month (affidavits attached to complaint, Exh. A to Suggestion, Appendix C hereto).[11]

In regard to the status of petitioners, the respondent Terminal Company alleges and describes them as a "labor organization" in its complaint and amended complaint (¶ 2 of Exhs. A & C to Suggestion, Appendix C hereto). In addition, respondent Terminal Company contended in the trial court that petitioners "were actually acting together with, and in concert with" members of a non-operating union, the Brotherhood of Railway Clerks (Excerpt from transcript of proceedings of Saturday afternoon, May 28, 1966, pp. 12-13, Exh. G to Suggestion, Appendix C hereto). While the petitioners were representing only railroad employees in conducting the picketing here involved, the official reports of the National Labor Relations

[11] Respondent Terminal Company conceded in the Florida trial court below that there was no question that this case would come within the monetary jurisdictional limits of the National Labor Relations Board (Proceedings of Saturday afternoon, May 28, 1966, p. 62; Proceedings of Sunday morning, May 29, 1966, pp. 44-45).

Board show that the NLRB has taken jurisdiction over two of petitioners (the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen) in regard to their representation of employees of non-railroad employers. *Brotherhood of Locomotive Firemen and Enginemen and Brotherhood of Railroad Trainmen and Phelps Dodge Corp.*, 130 NLRB No. 94, 47 LRRM 1461 (1961) (¶ D of Suggestion, Appendix C hereto). Petitioners also pointed out that the NLRB had asserted jurisdiction (by split decision) over certain picketing allegedly conducted by the non-operating unions, acting in concert, while they were representing only striking employees of the Florida East Coast Railway Company in their separate strike which has been going on since 1963 and that this assertion of NLRB jurisdiction had been affirmed by the U. S. Court of Appeals for the District of Columbia (by split decision). *International Brotherhood of Electrical Workers, AFL-CIO, et al.* v. *N.L.R.B.*, 350 F. 2d 791 (D.C. Cir. 1965), cert. den. March 21, 1966, 86 S. Ct. 1196, 16 L. Ed. 2d 206 (¶ D of Suggestion; pp. 4-5 of Answer, Exh. B to Suggestion, Appendix C hereto).

Based upon these undisputed facts and circumstances, appearing largely on the face of respondent Terminal Company's own pleadings, petitioners asserted in their answer in the Florida trial court that the subject matter of this suit fell within the exclusive, primary jurisdiction of the National Labor Relations Board (Answer of defendants, Exh. B to Suggestion, Appendix C hereto). They also asserted that the subject matter of the suit was preempted by controlling

federal law, and that the Norris-LaGuardia Act, 29 U.S.C. 101-113, divested the Florida state court of jurisdiction to issue injunctive relief in this case (Answer of defendants, Exh. B to Suggestion, Appendix C hereto).

The trial court denied this attack upon its jurisdiction and proceeded to assert jurisdiction over the case on May 30, 1966, by entering its Order for Temporary Injunction (Exh. E to Suggestion, Appendix C hereto). Petitioners thereafter filed their Suggestion for Writ of Prohibition with the Florida District Court of Appeal, First District, asserting that the Florida circuit court was proceeding without jurisdiction and in usurpation of the exclusive, primary jurisdiction of an administrative agency (see *Winn-Lovett Tampa* v. *Murphree*, Fla. 1954, 73 So. 2d 287). The Suggestion was denied on June 8, 1966 (Appendix A hereto).

## ARGUMENT AND REASONS FOR ALLOWANCE OF WRIT

At least since *Garner* v. *Teamsters Union*, 346 U.S. 485 (1953), and clearly since *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 239 (1959), this Court has consistently and repeatedly ruled that state courts lack jurisdiction to adjudicate the legality of peaceful, orderly picketing which is "arguably subject" to the protections or prohibitions of the Labor Management Relations Act, 29 U.S.C. 141 et seq. The state courts in such cases lack even the jurisdiction to decide on the merits the jurisdictional question. *Marine Eng. Ben. Ass'n* v. *Interlake Steamship Co.*, 370 U.S. 173 (1962).

The basis underlying this federal doctrine of preemption has at least two aspects. One is that Congress

has vested an administrative agency, the N.L.R.B., which presumably enjoys an expertness in the field, with the exclusive, primary power to make the determination of whether a matter does fall within its area of special competency or not. *San Diego Building Trades Council* v. *Garmon,* 359 U.S. 236, 244-245 (1959). In short, Congress divested *all* courts, both state and federal, of their function to serve as primary tribunals to adjudicate the issue of jurisdiction itself. The reason for such withdrawal of jurisdiction is obvious. If the multitude of trial courts, state and federal, are simultaneously deciding jurisdictional issues in labor cases along with the N.L.R.B., its role as a specialized agency shaping the initial course of administration of federal labor law would be literally submerged and destroyed. See *Capital Service* v. *N.L.R.B.,* 347 U.S. 501 (1954); compare *Amalgamated Clothing Workers* v. *Richman Brothers,* 348 U.S. 511 (1955).

The second premise underlying the preemption doctrine is that it serves to insure and guarantee that federally protected rights will not be eroded away by varying and uncorrectable state court decisions. Thus, the preemption doctrine applies even when the expert services of the N.L.R.B. are for some peculiar reason not available but the conduct nevertheless falls within the scope of federal legislation. *United Mine Workers* v. *Arkansas Oak Flooring Co.,* 351 U.S. 62 (1956); *Guss* v. *Utah Labor Relations Board,* 353 U.S. 20 (1957). Underlying this reason is the recognized fact that in labor cases the initial jurisdictional determination, and the "preliminary" or "temporary" injunction which flows therefrom, all too often decide and determine the entire dispute. Therefore, the unifying

function of this Court in reviewing federal question cases from state court systems is largely frustrated. See *Local No. 438, Construction & Gen. Lab. U.* v. *Curry*, 371 U.S. 542, 550. And without such uniformity it is impossible for the balance that Congress has struck between sharply competing economic issues to be maintained.

It is respectfully submitted that this case involves a clear and present conflict with this Court's many decisions explaining and re-explaining the controlling policy of federal preemption of state court jurisdiction over peaceful conduct "arguably subject" to N.L.R.B. jurisdiction. Certiorari should be granted to remove and correct this conflict.

That the conduct which the state court below enjoined is "arguably subject" to the N.L.R.B.'s jurisdiction is easily illustrated. Petitioners are accused of engaging in an illegal secondary (but peaceful) boycott.[13] The N.L.R.B. clearly has "arguable" jurisdiction over this type of conduct [§ 8(b)(4), 29 U.S.C. 158(b)(4)], unless some other circumstance present in the case makes it clear beyond doubt that it does not.

The only contention made by respondent Terminal Company below (see ¶ 11 of Complaint and Amended Complaint, Exhs. A and C to Suggestion, Appendix C hereto) is that the definition sections of the L.M.R.A., 29 U.S.C. 152(2)(3) expressly exclude application of the Act to petitioners and respondent Terminal Company. These definition sections, of course, do exclude

[13] See ¶ 12 of Complaint and Amended Complaint, Exhs. A and C to Suggestion, Appendix C hereto. Petitioners, of course, deny that their conduct is either illegal or secondary, or if secondary, illegal.

railroad carriers as "employers" under the Act and railroad employees as "employees" under the Act. But that is only the beginning of inquiry into an "arguable" area.

The fact that respondent is not an "employer" under the L.M.R.A. is clearly of little significance. This Court has squarely held that a railroad is not thereby precluded from invoking N.L.R.B. jurisdiction. *Local Union No. 25* v. *New York, New Haven and H. R. Co.*, 350 U.S. 155 (1956).[14]

A more serious question, however, is presented as to whether the status of petitioners excludes them from coverage under the L.M.R.A. In this regard, petitioners candidly and earnestly submit that their status is such that they are *not* covered by the L.M.R.A.[15] But recent decisions do not make this position so absolutely right as to put the question beyond all possible doubt or argument.

The recent case of *International Brotherhood of Electrical Workers, AFL-CIO* v. *N.L.R.B.*, 350 F.2d 791 (D.C. Cir. 1965), *cert. denied*, March 21, 1966, 16 L.Ed. 2d 206, demonstrates this plainly. In that case railroad unions representing striking employees of the Florida East Coast Railway Co. were found to be covered by N.L.R.B. jurisdiction despite their vigorous

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[14] This being true in 1957, it was even more so after the 1959 amendments to Taft-Hartley.

[15] Petitioners' position on the merits of L.M.R.A. jurisdiction has been and is that the Railway Labor Act, the Clayton Act, and the Norris-LaGuardia Act govern the legality vel non of their conduct to the exclusion of both state law and the L.M.R.A. The fact that petitioners take this position on the merits, however, does not serve either to grant or divest the N.L.R.B. of jurisdiction or to make the matter any more or less "arguable."

protest that the L.M.R.A. had no application to their conduct in representing railroad employees whatsoever. Certain of the unions there involved represented only railroad employees in their activities throughout the nation; others represented both railroad employees and non-railroad employees. The unions contended that they should be treated as Railway Labor Act organizations when representing railroad employees and as L.M.R.A. labor organizations when representing non-railroad employees. *Cf. Pan American World Airways, Inc.* v. *United Bro. of Carpenters & Joiners,* 324 F. 2d 217 (9th Cir. 1963) (holding that the status of an airline company as an employer under the Railway Labor Act or the L.M.R.A. depends upon what functions the employer is actually doing in the specific instance involved).

It can be seen from these cases that the question of coverage of the L.M.R.A., when it turns upon the status of either the employer or of the labor organization involved, can be an intricate and difficult one by any standards. Therefore, this Court has squarely held that, where the question of L.M.R.A. coverage does turn on status, a state court is preempted of jurisdiction to make that determination, and exclusive primary jurisdiction to make the initial decision on the question rests with the administrative agency, the N.L.R.B. *Marine Eng. Ben. Ass'n* v. *Interlake Steamship Co.,* 370 U.S. 173 (1962).

Petitioners respectfully submit that the foregoing cases clearly show that the question of N.L.R.B. jurisdiction over the conduct here involved is an "arguable" one, and that therefore the state court below lacked jurisdiction and the writ of prohibition should have issued.

Another separate, and independent, basis for seeking a writ of certiorari in this case is that an important question of federal labor law is here involved which has not been settled but should be settled to insure uniform application of federal law in this area. The question involved is whether the prohibitions of the Norris-LaGuardia Act, 29 U.S.C. 101 et seq., apply to state courts when such state courts are adjudicating federal labor cases governed and controlled by federal law. It has only been recently that it has become quite clear that federal law has virtually preempted the field of labor litigation throughout the nation. Thus, it has been held that federal law governs suits under Section 301 of Taft-Hartly even though the suit is brought in a state court. *Textile Workers Union* v. *Lincoln Mills of Alabama,* 353 U.S. 448 (1957); *Local No. 174, Teamsters* v. *Lucas Flour Co.,* 369 U.S. 95 (1962); *Charles Dowd Box Co.* v. *Courtney,* 368 U.S. 502 (1962); *Republic Steel Corp.* v. *Maddox,* 379 U.S. 650 (1965). Likewise, suits for damages under Section 303 of Taft-Hartley are governed by federal law. *Teamsters Union* v. *Morton,* 377 U.S. 252, (1964); *United Mine Workers* v. *Gibbs,* U.S. , 16 Law Ed. 2d 812.

Federal law similarly governs labor litigation arising out of Railway Labor Act situations. *Int'l Ass'n of Machinists* v. *Central Airlines,* 372 U.S. 682 (1963).

The holdings in the above cases make it clear that state courts, in adjudicating labor cases, will be primarily if not exclusively occupied with the task of applying federal law, much as a federal court applies state law in a diversity jurisdiction situation. Accordingly, the question of whether the prohibitions of the

Norris-LaGuardia Act will apply to such labor cases being tried in state courts is one that will become of ever increasing importance to the nation's judicial system. This Court noted in the *Charles Dowd Box Co.* v. *Courtney, supra,* that "The relation of the Norris-LaGuardia Act to state courts applying federal labor law has never been decided by this Court." 368 U.S. at 514, n. 8. The U. S. Court of Appeals for the Third Circuit has struggled with the problem in a removal context with indecisive results. See *American Dredging Co.* v. *Local No. 25, Marine Div., Int. U. Op. Eng.,* 338 F. 2d 837 (3d Cir. 1964), *cert. denied,* 380 U.S. 935.

In this instant case, petitioners asserted the jurisdictional bar of the Norris-LaGuardia Act in the state trial court (¶ 6 of Answer, Exh. B to Suggestion, App. C hereto). The trial court, however, proceeded to issue injunctive relief in this case which clearly arises out of a labor dispute within the meaning of Norris-LaGuardia, 29 U.S.C. 113.

In the prohibition proceedings in the Florida District Court of Appeal, below, petitioners likewise asserted the bar of Norris-LaGuardia as a basis for the issuance of a writ of prohibition (¶ F of Suggestion, App. C hereto). Accordingly, the question is squarely here presented, and it is respectfully submitted that certiorari should be here granted to decide this important question on the development and administration of federal law under the recent decisions cited above.

## CONCLUSION

This Court has noted at frequent occasions the undeniable fact that the issuance of a labor injunction frequently serves to terminate the entire dispute and

render illusory any legal right to review which the enjoined party might have. See *Local No. 438, Construction & Gen. Lab. U.* v. *Curry*, 371 U.S. 542 (1963). Here, both federal and state injunctions, supposedly temporary or preliminary in nature, have been issued against conduct which does not violate any specific command of Congress and which does fall within the category of conduct which Congress has specifically and repeatedly protected and removed from the threat of court injunction (the Clayton Act, 29 U.S.C. 52; the Norris-LaGuardia Act, 29 U.S.C. 101-113). This Court should grant the petition to vindicate and protect federal rights; to correct a glaring conflict between the state court decisions below and this Court's preemption holdings; and to settle the question of the application of Norris-LaGuardia to state court trials of federal law labor cases.

Respectfully submitted,

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1965

No. 244

BROTHERHOOD OF RAILROAD TRAINMEN, a labor organization, ET AL., *Petitioners,*

v.

JACKSONVILLE TERMINAL COMPANY, a Florida corporation; and HONORABLE ROGER J. WAYBRIGHT, as Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida,

*Respondents.*

## APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA FIRST DISTRICT

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